

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Market Entry and Regulation of)
Foreign-affiliated Entities)

IB Docket No. 95-22
RM-8355
RM-8392

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**COMMENTS OF THE MOTION PICTURE
ASSOCIATION OF AMERICA, INC.**

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MPAA COMMENTS IN IB Docket No. 95-22
MARKET ENTRY AND REGULATION OF FOREIGN-AFFILIATED ENTITIES

SUMMARY

On behalf of leading U.S. producers and distributors of motion pictures, television programming, and home video entertainment, the Motion Picture Association of America, Inc. ("MPAA") strongly endorses the ideal of open, competitive communications markets in the United States and around the world.

To that end, MPAA comments support:

- o taking foreign market openness into account as part of the FCC's domestic licensing responsibilities, consistent with the international obligations of the United States;
- o including content-related issues, such as the extent to which foreign markets are open to the provision of video and audio programming, in the FCC's authorization of entry of foreign telecommunications carriers into the U.S. market under Section 214;
- o taking a more liberal approach to alien investment in broadcasting;
- o including content issues, such as the extent to which foreign markets are open to the provision of video and audio programming, in the FCC's "public interest" analysis under Section 310(b)(4) when foreign ownership would exceed 25% with regard to applications both for common carrier licenses and for broadcast licenses.

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**COMMENTS OF THE MOTION PICTURE
ASSOCIATION OF AMERICA, INC.**

1. Motion Picture Association of America, Inc. ("MPAA") respectfully submits these comments in response to the "Notice of Proposed Rulemaking" released February 17, 1995, in the above-referenced proceeding. MPAA strongly endorses the ideal of open, competitive communications markets in the United States and around the world. To that end, MPAA welcomes the FCC's efforts to take foreign market openness into account as part of its domestic licensing responsibilities, consistent with the international obligations of the United States. MPAA also recommends that in authorizing entry of foreign telecommunications carriers into the U.S. market under Section 214, the FCC should include in its "public interest" determination consideration of content-related issues, including the extent to which foreign markets are open to the provision of video and audio programming. MPAA further recommends that the FCC take a more liberal approach to alien investment in broadcasting. Finally, MPAA recommends that the FCC also include content issues in its "public interest" analysis under Section 310(b)(4) when foreign ownership would exceed 25% with regard to applications both for common carrier licenses and for broadcast licenses.

2. MPAA is a trade association representing eight of the largest U.S. producers, distributors, and exporters of theatrical motion pictures, television programming, and home video entertainment. They include: Buena Vista Pictures Distribution, Inc.; Sony Pictures Entertainment Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Turner Pictures; Twentieth Century

Fox Film Corp.; Universal Studios, Inc; and Warner Bros., a Division of Time Warner Entertainment Company, L.P.

3. There is a growing trend toward technological convergence of the previously distinct telecommunications, information, and mass media industries. As the U.S. Government has noted,

"Boundaries that once separated the types of networks used to deliver voice, data and video services are increasingly blurred. In a digital world these services can be combined and offered over the same transmission system."¹

Given this convergence, MPAA has increasing interests, both in the United States and abroad, in policies affecting the openness and competitiveness of telecommunications markets. Conversely, the competitiveness of U.S. telecommunications providers will depend in part on the openness and competitiveness of international markets for audiovisual, multimedia and other forms of content carried over the networks. This trend should be reflected in U.S. regulatory policies.

4. Content industries, including movies, television programs, home video entertainment, books, music, sound recordings and computer software, are one of America's largest and fastest growing economic assets. In 1993 these industries generated \$238.6 billion and accounted for 3.7% of the U.S. Gross Domestic Product. Between 1977 and 1993, employment in these content industries more than doubled, to 3 million workers, or 2.5 % of total U.S. employment. In 1993, U.S. copyright industries achieved foreign sales of \$45.8 billion and were second only to the automobiles and auto parts sector in exports and foreign sales.

¹ "Global Information Infrastructure: Agenda for Cooperation," Ronald H. Brown, Secretary of Commerce and Chair, Information Infrastructure Task Force, February 1995, p. 3.

5. MPAA endorses the belief articulated by the U.S. Government, that regulatory environments that encourage private investment and promote competition, both foreign and domestic, are prerequisites for the healthy development of a Global Information Infrastructure.² Open, competitive markets are important not only with respect to the telecommunications infrastructure, but also with respect to the kinds of content that telecommunications carriers will be providing to their customers, including video-on-demand and other audiovisual and multimedia services.

**SECTION 214 STANDARDS FOR INTERNATIONAL FACILITIES-BASED
ENTRY BY FOREIGN CARRIERS:**

Effective market access:

6. MPAA strongly supports multilateral liberalization of communications services, including liberalization of audiovisual and multi-media services, as well as opening global markets for basic telecommunications services. It is regrettable that to date the World Trade Organization has failed to provide significant commitments, to say nothing of liberalization, in these sectors. Notwithstanding the initial failures to achieve broad-based, multilateral liberalization, the United States should continue its efforts in multilateral fora to achieve genuinely open markets around the world. Where multilateral liberalization can be achieved, MPAA believes this would be in the best interests of the United States. Therefore, FCC regulations should take into account that any examination of "effective market access" and other factors included in their public interests analysis must be consistent with U.S. international obligations. However, until such multilateral commitments are achieved, MPAA strongly applauds the FCC's efforts to take foreign market openness into account as part of its domestic licensing responsibilities.

² Ibid., p. 9.

Other Matters affecting the Public Interest Standards for Section 214

7. As part of its "public interest" determinations regarding entry of foreign telecommunications carriers into the U.S. market under Section 214, the FCC currently considers the market access opportunities available to U.S. carriers in the applicant's home market. The FCC notes that the Commission traditionally has not been concerned with content-related issues in authorizing the provision of U.S. international common carrier services. MPAA believes that in assessing the public interest for the purposes of Section 214, the FCC should include an examination of market access constraints on the broad range of content industries, including video-on-demand and other forms of audiovisual and multimedia programming, which can be provided in the home market of the foreign carrier.

SECTION 310(B)(4) STANDARD FOR RADIO LICENSEE OWNERSHIP BY FOREIGN ENTITIES:

Increasing flexibility for alien investment in broadcasting

8. The FCC raised a question as to whether it would be appropriate to revisit its historically restrictive approach to alien investment in broadcasting when a foreign entity seeks to acquire an indirect ownership interest of more than 25 percent in a broadcast facility. MPAA supports a more flexible approach to alien investment in broadcasting.

9. The United States currently has no restrictions on foreign investment in cable operating systems in the United States. The United States also has a completely open regime regarding foreign ownership of cable networks. Notwithstanding the open investment regime, the U.S. cable industry has attracted relatively little foreign investment.³

³ "Globalization of the Mass Media," U.S. Department of Commerce, National Telecommunications and Information Administration, Special Publication No.193-290, January 1993, pp. 74.

10. Historically, the U.S. Government had been concerned that foreign control of mass media facilities would confer control over the content of widely available broadcast material, which could lead to the possibility of foreign propaganda and misinformation. These fears were not unreasonable during a period when there were relatively few sources of information available to the public. MPAA does not believe that foreign ownership provides the same sort of risk in today's environment, where sources of information have multiplied tremendously.

11. An extremely broad range of options are now available to the U.S. consumer for obtaining news, information and entertainment programming. At present there are six privately owned broadcast networks, numerous publicly owned television stations, and dozens, soon to be hundreds, of channels delivered by cable and satellite providers. In addition to television, consumers can obtain their information from print media, radio, and computer services. With so many options available to U.S. consumers, MPAA believes that any attempt by foreign-owned cable operators (under current rules) or by foreign-owned broadcast service providers (under liberalized rules) would have minimal impact. Consumers would easily be able to weigh the information they receive from foreign-owned stations against other sources of information.

Other Matters affecting the Public Interest under Section 310(b)(4)

12. As argued above with respect to Section 214, MPAA believes the FCC should include an examination of market access constraints on content-based services, including market access conditions affecting the provision of audiovisual and multimedia services, in the home market of applicants for licenses under Section 310(b)(4) whenever the foreign ownership would exceed 25%. MPAA believes that content issues should be included in public interest determinations with respect both to foreign applications for common carrier licenses and to foreign applications for broadcast licenses. As noted in para 5 above, the FCC should ensure that its considerations remain consistent with U.S. international obligations.